

Exhibit 6D

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1 on another Universal preferred vendor; right?

2 **A Bringing on another vendor.**

3 Q Okay. And then you called CRS, according to the

4 note?

5 **A Yes.**

6 Q Down on 7-20-2012 there's another note from you.

7 See that?

8 **A Yes.**

9 Q What's the note say?

10 **A "Received mold certification. Scanned in."**

11 Q So that answers our question about whether you

12 ever received some sort of mold certification; right?

13 **A Yes.**

14 Q Actually received it; true?

15 **A Yes.**

16 Q Earlier you said you weren't so sure whether you

17 even received it, and I asked you, "Well, you knew where

18 to go get it; right?" And you said yes. Now it appears

19 that, from the claims notes, that you in fact had a copy

20 of the mold certification scanned into the computers but

21 still did not give that to the insureds until February of

22 2013, nearly seven months later. True?

23 **A Yes.**

24 Q How is that reasonable?

25 MR. CANNON: That's argumentative.

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1 Go ahead.

2 THE WITNESS: I'm not sure that they requested it.

3 BY MR. BALMER:

4 Q You don't think that the insureds had an

5 interest in knowing what's going on with the remediation

6 of their home?

7 MR. CANNON: Calls for speculation as to what's in

8 their mind.

9 Go ahead.

10 THE WITNESS: I think they would have an interest in

11 their remediation, yes.

12 BY MR. BALMER:

13 Q So regardless of whether they asked for it, at

14 that time when you received it, why didn't you give it to

15 them?

16 **A I don't know.**

17 Q Then ultimately you'll admit, won't you, that

18 they started asking for that information and you still

19 didn't give it to them? Isn't that true?

20 **A Well, I can't remember when they started asking.**

21 Q But you recall they started asking for it;

22 right?

23 **A Yes.**

24 Q And you still didn't give it to them?

25 MR. CANNON: I'm going to object. He just said he

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1 didn't know when they started asking.

2 BY MR. BALMER:

3 Q Go ahead. You can answer.

4 **A Yeah, I don't know.**

5 Q Well, I mean you either gave it to them or you

6 didn't.

7 **A I didn't.**

8 Q So down in the next note on 7-30-2012, it

9 indicates that you received and paid a CRS invoice for

10 temporary housing for \$1,450.45 for one night. Is that

11 correct?

12 **A I think that's an error. That's got to be an**

13 **error.**

14 Q Another error in the claims notes?

15 **A Yes. It was -- I can go back and get the**

16 **records, the actual invoice.**

17 Q You would agree that \$1450.45 for one night is

18 excessive?

19 **A Yes.**

20 Q I mean your hotel at the Nugget isn't \$1450 a

21 night, is it?

22 **A No.**

23 Q Now, down at the bottom of the page is a

24 "supervisor review, random file review." Do you see that

25 on September 10th?

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1 **A Yes.**

2 Q Who is that?

3 **A That's Otto Kieslich.**

4 Q Here's Otto?

5 **A K-i-e-s-l-i-c-h-o.**

6 Q It seems like there was not a lot of activity

7 between the end of June and the middle of September when

8 Mr. "Keys" -- that guy --

9 **A Kieslich.**

10 Q -- Kieslich did his random file review; isn't

11 that right?

12 **A In the notes, yes.**

13 Q Well, we talked about what that means, didn't

14 we? Because it's important to document thoroughly and

15 accurately the claims activity on the file in the claims

16 notes. We talked about that, didn't we?

17 **A Yes.**

18 Q And so based on Otto's review on the next page,

19 does he not give you direction on what to do with this

20 claim?

21 **A Yes.**

22 Q What does he say?

23 **A "Please advise action plan to bring this to**

24 **resolution. Notes indicate open damages under contents**

25 **and apparently ALE. Thanks."**

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1 Q What action plan did you bring to the table to
2 resolve this ongoing claim?
3 **A I may not have noted it, but I may have gone**
4 **over and talked to him about this claim.**
5 Q Again that would be something that, if you were
6 taking thorough notes, would be, if it happened, in the
7 claims notes; true?
8 **A That's probably something that would have been**
9 **better put in notes, yes.**
10 Q Because right now you can't truthfully testify
11 that that even occurred, can you?
12 **A No.**
13 Q Okay. On September 12th, 2012, another note
14 from you, it looks like you get a call from Paul Davis
15 Restoration saying that there is additional charge for
16 breaking granite top while removing cabinets. Do you
17 recall that?
18 **A Yes.**
19 Q All right. So your preferred vendor broke the
20 granite countertop at the Cathcart residence during their
21 work there; is that true?
22 **A Yes.**
23 Q Also on the 12th it looks like you took a
24 telephone call from Mr. and Mrs. Cathcart, did you not?
25 **A Yes.**

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1 Q And the Cathcarts informed you that Ms. Cathcart
2 has MS and has been hospitalized a few days. See that?
3 It's at the bottom of that 9-12-2012 claims note, the
4 second of the two claims notes.
5 **A Oh, yeah.**
6 Q Do you see that?
7 **A Yeah.**
8 Q Do you have any general knowledge about stress'
9 relationship with MS flareups?
10 **A No.**
11 Q Looks like on 9-13-2012 you're directly
12 communicating with Paul Davis Restoration again
13 concerning the granite countertop, are you not?
14 **A Yes.**
15 Q She's pleading her case that they took every
16 precaution but the darn thing still broke; right?
17 **A Yes.**
18 Q And ultimately you gave them permission to order
19 and replace that granite countertop, did you not?
20 **A Yes.**
21 Q Who was going to pay for that? Who is going to
22 pay for that?
23 **A Universal.**
24 Q Okay. Now, down in -- at the bottom of that
25 claim note, there appears to be an E-mail from Karen

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1 Reason to Paul Davis. The last sentence says, "I know
2 the homeowners are motivated to move forward. Please
3 advise of your approval so we can complete the work
4 necessary."
5 It appears that Paul Davis is looking to
6 Universal to kind of move things along because the
7 homeowners are motivated to get it done. Is that your
8 understanding of that?
9 **A Yes.**
10 Q Okay. So on the next claim note on 10-3 of
11 2012, another note by you, do you see that?
12 **A Yes.**
13 Q It says, "Got call from named insured. Went
14 over additional utilities."
15 Read the rest of that sentence into the record,
16 please.
17 **A "Electric bill increased due to negative air**
18 **setup for mold remediation."**
19 Q Does that further refresh your memory that Paul
20 Davis Restoration was engaged in mold remediation in the
21 Cathcart home?
22 **A Yes.**
23 Q And it says down there a little bit later in
24 that note that you called Paul Davis Restoration about
25 the countertop; right?

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1 **A Yes.**
2 Q As of November 7, 2012, looks like you got a
3 call from the named insured while you were on vacation.
4 Where did you go?
5 **A I don't remember.**
6 Q "She said she has no sink, no water. Refuses to
7 deal with Paul Davis Restoration."
8 So at this point you were starting to figure out
9 that your preferred vendor was somebody that the insureds
10 no longer wanted to deal with. Is that right?
11 **A Yes.**
12 Q Okay. The next entry, 11-12-2012, another entry
13 by you says, "Call from named insured. He upset that,
14 while re-installing the countertops, technicians found
15 more mold on the other side of the kitchen," and then you
16 say, "probably not related to the original loss." Do you
17 see that?
18 **A Yes.**
19 Q What expert opined to Universal that that mold
20 was not related to the original loss?
21 **A No one at that time.**
22 Q Well, no one at any time; isn't that right?
23 **A Well, I think it was -- the loss happened way**
24 **far away from the kitchen unless it's -- it's pretty**
25 **obvious. You don't need an expert to tell you that water**

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1 can't climb from one area to another. It can't climb up
2 a wall.

3 Q I'm going to call your -- water can't wick up a
4 wall?

5 A Can't go up a wall.

6 Q Water cannot wick up a wall; is that what you're
7 saying?

8 MR. CANNON: He just explained what he was saying,
9 Counsel.

10 MR. BALMER: Well, I'm trying --

11 MR. CANNON: Read it back. Will you read back his
12 response, please.

13 (The record was read as follows:

14 "QUESTION: Well, I think it
15 was -- the loss happened way far away
16 from the kitchen unless it's -- it's
17 pretty obvious. You don't need an
18 expert to tell you that water can't
19 climb from one area to another. It
20 can't climb up a wall.")

21
22 THE WITNESS: Climb.

23 BY MR. BALMER:

24 Q Climb, c-l-i-m-b?

25 A Uh-huh.

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1 A Yes.

2 Q So if the insureds discovered water throughout
3 the entire house, water doesn't have to climb anywhere to
4 get anywhere in the house, does it? It's already there.

5 A That's true.

6 Q Thank you.

7 So back to this 11-12-2012 entry, which is on
8 page 363, where you say, "probably not related to the
9 original loss," you agree that there's no expert that
10 told you that; right?

11 A Correct.

12 Q You don't have any technical training to
13 determine that for yourself either, do you?

14 A No.

15 Q Okay. So it looks like down a couple of lines
16 says, "Called Chris and he confirmed that more mold
17 found."

18 So now you are calling Chris at Paul Davis
19 Restoration?

20 A Yes.

21 Q Now, you go on to say, "And I sending out Carl
22 is foreman to inspect tomorrow. Explain we need to get
23 this six- to seven-month-old claim brought to a
24 conclusion." Do you see that?

25 A Yes.

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1 Q Is that a "yes"?

2 A Yes.

3 Q You know, you've been doing water-damage claims
4 for a long time, sir. Is that true?

5 A Yes.

6 Q When there is a flood and water impacts the
7 cellulose-based building materials such as dry wall,
8 sheetrock, plaster, baseboards, water tends to wick up a
9 wall, does it not?

10 A Yes.

11 Q What's the difference between wicking and
12 climbing?

13 A Well, it only wicks up a certain amount on the
14 wall like, you know, less than 12 inches.

15 Q Well, it depends on how much water is there,
16 does it not?

17 A It could be a factor, yeah.

18 Q And based upon your testimony just now about how
19 high water can wick up on a wall up to about 12 inches,
20 tell me what technical training that opinion is based on.

21 A It's not.

22 Q I'm going to call your attention back to the
23 very first page, the very first entry. Do you see where
24 it says, "Insured discovered water throughout the entire
25 house"?

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1 Q You wrote that?

2 A Yes.

3 Q And then you told Paul Davis Restoration what?

4 A To proceed with any new mold detecting.

5 Q To remediate it; correct?

6 A Yes.

7 Q You didn't tell Paul Davis Restoration, "Hold
8 on. There's a mold limit here." You told Paul Davis
9 Restoration to proceed with any new mold detected, didn't
10 you?

11 A Yes.

12 MR. CANNON: I'm going to object; it's a joint
13 question. Ask him a straight question.

14 MR. BALMER: I just did.

15 Q Answer it, please.

16 MR. CANNON: Move to strike.

17 Go ahead.

18 THE WITNESS: Yes.

19 MR. BALMER: Well, I'm going to make sure that the
20 question is clear if we're going to have an objection.

21 Q So in relationship to your direction to Paul
22 Davis to proceed with any new mold detected, you did not
23 inform Paul Davis that there was any sort of mold
24 limitation that would somehow cap the amount that they
25 would be able to spend to remediate that mold issue;

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1 true?

2 **A True.**

3 **Q** In fact you gave Paul Davis Restoration what
4 appears to be carte blanche permission to proceed with
5 any new mold detected, didn't you?

6 **A Yes.**

7 **Q** Do you see an inconsistency with the permission
8 that you were giving to Paul Davis, the preferred vendor
9 of Universal, concerning mold remediation and the
10 position now being taken by Universal that some sort of a
11 mold limitation of \$10,000 somehow now applies to the
12 claim of the Cathcarts? Do you see some inconsistency
13 there?

14 **MR. CANNON:** I'm going to object to that. It's
15 compound, it's argumentative, lacks foundation.

16 Go ahead.

17 **BY MR. BALMER:**

18 **Q** Go ahead.

19 **A Yeah, I can see some conflicts.**

20 **Q** You see some inconsistency, don't you?

21 **A Yes.**

22 **Q** Now, you're supposed to be fair with the
23 insureds, aren't you?

24 **A Yes.**

25 **Q** The insurance company is supposed to honor its

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1 **Q** And that was directly in the area of the broken
2 pipe under the slab; correct?

3 **A As far as I know, yes.**

4 **Q** And we already testified earlier, didn't you,
5 that the water loss most likely was a category 2 given it
6 was an underground leak? True?

7 **A Yes.**

8 **Q** But still Universal took no action to retain an
9 appropriate expert to test and otherwise examine for that
10 issue; isn't that right?

11 **MR. CANNON:** Object to the form.

12 Go ahead.

13 **THE WITNESS:** Yes.

14 **BY MR. BALMER:**

15 **Q** Page 364, this is an E-mail from Paul Davis to
16 James Ketcham, says "James," comma. Do you see that?

17 **A Yes.**

18 **Q** And this is one of those E-mails that you cut
19 and paste into the notes?

20 **A Yes.**

21 **Q** Down about midway through, there are -- it looks
22 like four bullet points that they're looking for
23 permission to do. Do you see that?

24 **A Yes.**

25 **Q** Okay. And it says -- just above that says,

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1 obligation to the insured, is it not?

2 **MR. CANNON:** Asked and answered about five times now.

3 **MR. BALMER:** Let's go for number six. I'm on a roll.

4 **Q** Go ahead.

5 **A Yes.**

6 **Q** And the insurance company is supposed to honor
7 its express authority given to its preferred vendors, is
8 it not?

9 **A Yes.**

10 **Q** Okay. So down on 11-13-2012 -- this is still on
11 363 -- it says, "Received call from named insured.
12 Contractors have now found additional mold all along the
13 opposite wall where the original mold was found. They
14 are also checking under the tub as everyone keeps
15 smelling an odor coming from the tub/bedroom area."

16 Did you write that?

17 **A Yes.**

18 **Q** Did you ever authorize any sort of
19 pre-remediation inspection or testing by a professional,
20 an indoor environmental professional?

21 **A No.**

22 **Q** Well, now you've got contractors talking about
23 smells in the home related to what they believe to be
24 mold in that tub/bedroom area; right?

25 **A Yes.**

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1 "However, without approval from you, we will not be able
2 to proceed." Do you see that?

3 **A Yes.**

4 **Q** So Paul Davis is clearly looking to the
5 insurance company for direction and approval on the
6 claim; isn't that right?

7 **A Yes.**

8 **MR. CANNON:** Well --

9 **BY MR. BALMER:**

10 **Q** So there are four bullet points. One is,
11 "Replace carpet in master bedroom, living room and dining
12 room." Do you see that?

13 **A Yes.**

14 **Q** The next one is, "Replace three tiles in the
15 entryway. He ascertains our equipment caused damage. We
16 cannot say for sure if we caused any damage. The tiles
17 have been poorly installed and are hollow." Do you see
18 that?

19 **A Yes.**

20 **Q** No. 3 is "duct cleaning." They say that the
21 Cathcarts' request seems reasonable due to the amount of
22 construction in his home and concerns with mold spores.
23 Do you see that?

24 **A Yes.**

25 **Q** And then No. 4, "He is insisting on new

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1 kitchen -- upper and lower kitchen cabinets." Do you see
2 that?
3 **A Yes.**
4 **Q** Now, go back to the last page, 363, and the
5 bottom entry on 11-14-2012 you are responding to that
6 E-mail in the claims notes; right?
7 **A Yes.**
8 **Q** Okay. Read into the record, please, the first
9 sentence. It starts with "E-mail."
10 **A "E-mail from PDR. I will authorize items 1, 2**
11 **and 3 but do not understand why the kitchen cabinets have**
12 **to be replaced. Please call me on this item so we can**
13 **discuss."**
14 **Q** Okay. So this is another example of where
15 Universal expressly authorized Paul Davis Restoration to
16 do some work in the Cathcart home; true?
17 **A Yes.**
18 **Q** And that included replacing of the carpet in the
19 master bedroom, living room and dining room, replacing
20 tiles in the entryway, and duct cleaning due to the
21 amount of construction in the home and concern over mold
22 spores; true?
23 **A Yes.**
24 **Q** And there's no indication from you in your
25 claims notes that you informed anybody that, "Hey, wait a

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1 mold behind the cabinets"; correct?
2 **A Yes.**
3 **Q** "She says she knows insured has been upset and
4 with things as they have progressed, but there is a
5 legitimate argument for replacing the kitchen cabinets.
6 She indicated they were very moldy and, if it was her
7 home, she would want the kitchen cabinets replaced with
8 the new mold discovered." Do you see that?
9 **A Yes.**
10 **Q** Apparently she was going to send you some photos
11 to show the damage. You then go on to say, do you not,
12 "We then discussed the lien by the mold vendor. PDR
13 explains that this issue has been resolved with payment
14 of the mold vendor."
15 Who is the mold vendor?
16 **A I don't know. Doesn't say who it is.**
17 **Q** So here Karen Reason of Paul Davis Restoration
18 is telling you that the kitchen cabinets need to be
19 replaced; true?
20 **A Yes.**
21 **Q** Ultimately you agreed to replace the cabinets
22 and -- did you not?
23 **A Yes.**
24 **Q** And again, even though that dealt with a mold
25 issue, you didn't inform anyone to be wary of any sort of

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1 minute. On the mold-spore thing, there's some alleged
2 cap on what we pay for mold." You didn't say that, did
3 you?
4 **A No.**
5 **Q** No. You authorized them to move forward on the
6 duct cleaning due to concerns with mold spores, didn't
7 you?
8 **A Yes.**
9 **Q** Just like you had authorized Paul Davis
10 Restoration to proceed with any new mold detected; is
11 that right?
12 **A Yes.**
13 **Q** And ultimately, although not on this page,
14 you'll recall that you did authorize the replacement of
15 the cabinets, both upper and lower; true?
16 **A Yes.**
17 **Q** And that was after further communication with
18 Paul Davis Restoration; is that right?
19 **A Yes.**
20 **Q** Paul Davis Restoration told you on the telephone
21 on November 14, 2012 that -- and this is Karen Reason in
22 a discussion that you were having with her about the
23 cabinet situation. Do you see this note?
24 **A Yes.**
25 **Q** You say, "She was at the site yesterday and saw

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1 a mold limitation in the insurance policy, did you?
2 **A Not at this time.**
3 **Q** Well, not at any time until you decided to sue
4 your insureds; isn't that right?
5 **MR. CANNON:** Objection; foundation.
6 **THE WITNESS:** I don't remember if it was before or --
7 the litigation started or not.
8 **BY MR. BALMER:**
9 **Q** So at the time that you were busy providing all
10 sorts of express authorization to Paul Davis Restoration
11 to take care of any and all mold in the house, you were
12 providing that express permission and authorization to
13 move forward without any statement of -- that Universal
14 might not pay; is that right?
15 **A Correct.**
16 **Q** In fact it would have been reasonable for Paul
17 Davis to presume and expect that Universal would pay for
18 the work that it is expressly authorizing Paul Davis to
19 perform; right?
20 **A Yes.**
21 **Q** And it would be also reasonable for the insured
22 to also expect that Paul Davis would be paid by Universal
23 for work that Universal expressly authorized Paul Davis
24 to perform; true?
25 **MR. CANNON:** Calls for speculation as to what the

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1 insured knew.
 2 Go ahead.
 3 THE WITNESS: It would be likely, yes.
 4 BY MR. BALMER:
 5 Q I'm going to call your attention, please, to the
 6 claim note on 11-30-2012 and it runs over onto the next
 7 page from 365 to 366. Do you see that claim note?
 8 A Yes.
 9 Q You received an E-mail from Paul Davis
 10 Restoration?
 11 A Yes.
 12 Q And they were giving you an update on the claim?
 13 A Yes.
 14 Q They were discussing with you the flooring
 15 vendor coming to the house?
 16 A Yes.
 17 Q Ultimately you agreed that Paul Davis
 18 Restoration replaced the tile throughout the house; isn't
 19 that true?
 20 A Yes, I did.
 21 Q There were no strings attached to that
 22 authorization, were there?
 23 A No.
 24 Q And you would agree that Paul Davis and the
 25 Cathcarts had a reasonable expectation that when

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1 A Yes.
 2 Q Again no strings attached; right?
 3 A Correct.
 4 Q Down from 12-7-2012 and through December 12,
 5 2012 you're discussing replacement of those kitchen
 6 cabinets, are you not?
 7 A Yes.
 8 Q And you're looking for estimates for those
 9 kitchen cabinets; true?
 10 A Yes.
 11 Q Down on 12-10-2012 you did an entry and the last
 12 line of that says what? Starts with "Told."
 13 A "Told PDR in Vegas to proceed with order.
 14 Unfortunately it will take six weeks to arrive. Note
 15 from PDR about cabs. I spoke with Patrick at Lowe's
 16 (702)568-3300. He stated the payment would need to be
 17 made in full payable to Lowe's."
 18 Q All right. So these two notes on the
 19 December 10 and December 12 represent express authority
 20 given by Universal to Paul Davis to move forward with
 21 ordering the kitchen cabinets from Lowe's; true?
 22 A Yes.
 23 Q And there's nothing in that authorization that
 24 demonstrates any sort of notice or statement to Paul
 25 Davis or the homeowners that there was any sort of a mold

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1 Universal agreed to pay Paul Davis for the work and have
 2 it done, that Universal would actually pay Paul Davis for
 3 that work; is that true?
 4 A Yes.
 5 Q In fact just below her E-mail -- well, her
 6 E-mail asks, "How would you like us to proceed?" So
 7 that's Paul Davis looking to Universal for direction on
 8 the claim; right?
 9 A Yes.
 10 Q And then down below you say, "Called Karen.
 11 Went over tile costs. Explain I feel, with all that has
 12 gone on with this claim, that the named insured will not
 13 be satisfied with anything else. Has bid 7,000." Do you
 14 see that?
 15 A Yes.
 16 Q And then what did you tell her? What's the next
 17 line, Karen from Paul Davis?
 18 A So told her to proceed with the tile
 19 replacement.
 20 Q What else do you say?
 21 A "Unfortunately it is tile that is continuous
 22 throughout the home."
 23 Q So there's your express authorization to Paul
 24 Davis to move forward with the retiling of the house;
 25 true?

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1 limitation in play for those cabinets. Is that right?
 2 A Correct.
 3 Q All right. Let's go on to January 2nd,
 4 please --
 5 A What page?
 6 Q -- 2013.
 7 It's on page 367. It's the fourth entry up from
 8 the bottom. What happened?
 9 A "Call from named insured about broken slider.
 10 Named insured called and said PDS broke glass."
 11 Q PDR.
 12 A "PDR broke glass in custom eight-foot slider.
 13 Explained this issue with the slider is not being
 14 properly sealed at the origin -- original installation is
 15 a separate claim and another deductible would apply."
 16 Q Okay. That's good enough.
 17 So basically what happened is the preferred
 18 vendor for Universal, Paul Davis, broke the sliding glass
 19 door in the Cathcart home --
 20 A Correct.
 21 Q -- right?
 22 Who is Don Grimm?
 23 A He is a director of claims.
 24 Q How does he sit in the hierarchy at Universal
 25 during the period of the Cathcart claim?

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1 A He was in charge of compliance, of claims
 2 compliance.
 3 Q Claims compliance with what?
 4 A If you get -- he kept track of what they called
 5 CRN, Civil Remedy Notices, Department of Insurance
 6 complaints, lawsuits, that type of thing.
 7 Q So why did you -- on February 12th, 2013 -- this
 8 is on page 371 -- why was attorney correspondence -- it
 9 says, "I sent an E-mail to Don Grimm." Why was that
 10 going on?
 11 A I think he says that Don Grimm is sending a
 12 letter of rep to Jim K. Is that what you mean?
 13 Q No. It says on 2-12-2013 TaslerJ writes,
 14 "Attorney correspondence. I sent an E-mail to Don
 15 Grimm."
 16 A Yes.
 17 Q What's that all about?
 18 A That is the clerical person in the claims
 19 department is notifying Don Grimm that attorney
 20 correspondence has arrived.
 21 Q Have you ever seen one of those E-mails that
 22 notifies of attorney correspondence arriving?
 23 A Yes.
 24 Q What do those documents say to Mr. Grimm?
 25 A It just says, "Attached is attorney

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1 correspondence." Real simple.
 2 Q So in terms of your response to that
 3 February 11, 2013 letter sent to you that requested many
 4 bullet points of authority and information and other
 5 things, ultimately the director of claims ratified your
 6 response to that letter; is that right?
 7 MR. CANNON: Objection; legal conclusion.
 8 Go ahead.
 9 THE WITNESS: No.
 10 BY MR. BALMER:
 11 Q Did he give you direction on how to respond?
 12 A No.
 13 Q You as the supervisor had the authority to
 14 respond and bind the company by virtue of your position?
 15 A Yes.
 16 Q Okay. On page 373, on March 19, 2013 there's an
 17 entry by you. What does that mean?
 18 A It starts out "CRS"?
 19 Q No, the next one down on the 19th.
 20 A Oh, 3-19? Sorry. I just made a large-loss
 21 report and forwarded it to Otto for review.
 22 Q Where is that large-loss report? Is that in the
 23 file?
 24 A It is.
 25 Q You've seen it in there?

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1 A I saw it in there.
 2 Q What was the purpose of that large-loss report?
 3 A Any time you get a large loss that exceeds
 4 50,000, you got to present it to the next person up the
 5 line.
 6 Q Otto was your next person up?
 7 A Yes.
 8 Q You've made some statements throughout the
 9 claims notes that we've talked about concerning mold
 10 being not related or possibly related or possibly not
 11 related here and there. We've talked about -- we've
 12 talked about the fact that you don't have any expert
 13 opinions or conclusions to back you up there. When I
 14 look at that large-loss report, am I going to see the
 15 same kinds of opinions and allegations that are
 16 unsupported by any expert in that large-loss report?
 17 MR. CANNON: I'm going to object to the form of the
 18 question.
 19 Go ahead. You can answer.
 20 THE WITNESS: I have to look at it, but I don't think
 21 there's any expert reports in there.
 22 BY MR. BALMER:
 23 Q Okay. So any sort of opinion similar to those
 24 that we've been talking about about mold and water and
 25 what water can do and what parts of the house were

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1 affected or unaffected, those would just be statements
 2 made by you without the benefit of an expert opinion to
 3 ensure that your position on that issue is correct. Is
 4 that right?
 5 A I have to read the report to give you a good
 6 answer on that. I don't think I would have mentioned
 7 anything about expert reports in there.
 8 Q My question is a little bit different though,
 9 sir. My question is, throughout the claim notes you --
 10 we've talked about instances where you have jumped to a
 11 conclusion about whether mold or water is related or
 12 unrelated, those kinds of things. We've talked very
 13 specifically about the fact that there's no expert
 14 opinion or conclusion that supports those types of
 15 positions taken by you. My question is, if I get into
 16 your large-loss report in the foot and a half stack of
 17 information that I got today and I see some sort of
 18 opining by you as to mold or relationship or area of
 19 water damage, that those similarly are unsupported by any
 20 sort of an expert opinion or conclusion. Is that right?
 21 MR. CANNON: I'm going to object to the form.
 22 Go ahead.
 23 THE WITNESS: Yes, I would say so.
 24 BY MR. BALMER:
 25 Q Down at the bottom of this 373 page, there are

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1 two E-mails, both from TaslerJ. Who is TaslerJ?
 2 **A That's a clerical person, a customer rep.**
 3 Q Okay. She's sending some more attorney
 4 correspondence to Don Grimm. See that?
 5 **A Yes.**
 6 Q Do you have any idea what was said in those?
 7 **A No.**
 8 Q Okay. So on the next page, 374, there's a claim
 9 note by Otto on April 10, 2013, says, "Supervisor review
 10 Jim," comma. "Reviewed claim. Ad authority extended to
 11 conclude up to the requested 134,736.05." Do you see
 12 that?
 13 **A Yes.**
 14 Q You haven't paid \$134,736.05 on this claim, have
 15 you?
 16 **A No.**
 17 Q But the authority is there?
 18 **A Yes.**
 19 Q Why was the amount of the authority not tendered
 20 to the insured?
 21 **A 'Cause it was in dispute.**
 22 Q Well, you would agree that insurance companies
 23 are required to tender undisputed amounts, aren't you?
 24 **A Yes.**
 25 Q So are you saying that all of that 134,736.05

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1 was in dispute?
 2 MR. CANNON: I'm going to object; that
 3 mischaracterizes his testimony.
 4 BY MR. BALMER:
 5 Q Well, I'm asking you.
 6 **A I don't remember the total that was paid out,**
 7 **but most of the undisputed was paid out at that time.**
 8 Q At the time that -- okay. Let me make sure I
 9 understand this correctly.
 10 So, "Reviewed claim. Ad authority extended to
 11 conclude up to the requested 134,736.05." Up to that
 12 point, how much of that hundred -- is that additional on
 13 top of what's already been paid?
 14 **A No. That's the whole thing.**
 15 Q Okay. So at the time of April 10, 2013 where
 16 this authority was extended, how much had been paid?
 17 **A I'd have to go look at the checks that had been**
 18 **issued to get a full amount on that.**
 19 Q Well, do you think it was -- can you estimate
 20 for me? I mean it wasn't anywhere close to \$134,000, was
 21 it?
 22 **A It was a good chunk of money.**
 23 Q Probably over 50,000 due to the large-loss
 24 designation; right?
 25 MR. CANNON: I'm going to object to the form.

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1 Don't guess. If you have an idea, do it.
 2 THE WITNESS: I could probably find it pretty quick.
 3 BY MR. BALMER:
 4 Q Where would you go to look?
 5 **A In the payment -- whatever I can find with the**
 6 **payments that have been made, a list of the checks that**
 7 **were issued.**
 8 Q Where is that list?
 9 **A In the claims.**
 10 Q So I could go look at that list of checks --
 11 **A And add them up.**
 12 Q -- and I could see what was paid up to April 10,
 13 2013 and then compare that to the 134,736.05 and I would
 14 know how much money was left on authority that had been
 15 paid; is that right?
 16 **A Yes.**
 17 MR. CANNON: It's April 19th though, not April 10th.
 18 MR. BALMER: No, that's not true.
 19 MR. CANNON: If you look at the entry, it's right
 20 there, isn't it?
 21 MR. BALMER: No, it's not.
 22 MR. CANNON: Okay.
 23 MR. BALMER: Let's ask the witness.
 24 Q Isn't that sentence, "Reviewed claim. Ad
 25 authority" -- doesn't that follow a "Supervisor review.

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1 Jim," comma, and then that --
 2 **A Yeah. That entry was made April 10th, 2013.**
 3 Q Thank you.
 4 Down on April 19, 2013 you received an E-mail
 5 from Todd Osmundson at Earth Resource Group?
 6 **A Yes.**
 7 Q And Todd Osmundson indicated that, "The results
 8 indicate that elevated airborne fungal spores are present
 9 within the structure and mold growth was identified
 10 within wall cavities and on carpet tack and dry wall."
 11 Do you see that?
 12 **A Yes.**
 13 Q And at the time this was the only mold report
 14 that you had; right?
 15 MR. CANNON: Object; that mischaracterizes earlier
 16 testimony.
 17 THE WITNESS: Yeah. We had other mold reports before
 18 this.
 19 BY MR. BALMER:
 20 Q Well, how many?
 21 **A There's been so many.**
 22 Q On this case?
 23 **A Yeah.**
 24 Q I think we've only talked about -- I mean
 25 there's only the Nevada Mold Testing one from the summer,

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1 July of 2012, that you never provided until February
 2 sometime of 2013. We've seen invoices from MSE, but you
 3 didn't say that you had those reports. Do you have those
 4 reports?
 5 **A No, I don't have the reports, no.**
 6 Q Okay. I'm talking about reports.
 7 So the opinion that is set forth here in Todd
 8 Osmundson's E-mail to you identifies a problem within the
 9 Cathcart home, does it not?
 10 **A Yes.**
 11 Q And at no time following your receipt of this
 12 expert opinion and conclusion did you go out and hire any
 13 other expert to tell you any different, did you?
 14 **A No.**
 15 Q Okay. So on 4-23-2013 it looks like there's
 16 another entry by you. Do you see that?
 17 **A Yes.**
 18 Q Okay. You're talking about some balance with
 19 CRS. Do you see that?
 20 **A On -- what's the date of the entry?**
 21 Q It's on the bottom of page 374. It's 4-23-2013.
 22 **A Yes.**
 23 Q On the next page it continues. Down at the very
 24 last sentence of that claim note it says, "Will discuss
 25 obtaining counsel on our behalf with Rich/Otto." Do you

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1 **be inconsistent, but you're just trying to get the**
 2 **insured taken care of.**
 3 Q So by authorizing Paul Davis to do a bunch of
 4 work, including mold remediation throughout the home, and
 5 then not paying Paul Davis for all that work, resulting
 6 in a Notice of Lien on the Cathcart's home, that somehow
 7 facilitated resolution of the claim?
 8 MR. CANNON: Argumentative.
 9 Go ahead.
 10 THE WITNESS: No, that didn't.
 11 MR. BALMER: Right.
 12 Q And so now you're in trouble and you're looking
 13 to hire counsel to protect the insurance company at the
 14 expense of the insured. Is that true?
 15 MR. CANNON: Objection; form of the question.
 16 THE WITNESS: I looked to counsel to give guidance on
 17 this claim.
 18 BY MR. BALMER:
 19 Q Because there were problems with the claim.
 20 Looking back on it at that point, you could see the
 21 inconsistency of the positions that Universal was going
 22 to have to take to protect itself; right?
 23 **A I was looking to get counsel's view of the claim**
 24 **and their recommendations.**
 25 Q Because of the inconsistencies in the claim?

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1 see that? It's the very last sentence above -- on 375,
 2 which is a continuation of the claim note from 374.
 3 **A Yes.**
 4 Q Well, what happened? Why did you -- why were
 5 you now discussing obtaining counsel?
 6 **A Because of the mold limit and determining what**
 7 **was mold and what was water damage and --**
 8 Q Well, you'd been giving Paul Davis Restoration
 9 unlimited authority to go handle all the mold remediation
 10 up to this point --
 11 MR. CANNON: I'm going to object to the
 12 characterization.
 13 BY MR. BALMER:
 14 Q -- were you not?
 15 MR. CANNON: Object to the characterization, form of
 16 the question.
 17 THE WITNESS: Yes, I was.
 18 BY MR. BALMER:
 19 Q And now all of a sudden there's a mold limit in
 20 play?
 21 **A Yes.**
 22 Q Who made that decision? It's inconsistent, is
 23 it not?
 24 **A You do things on claims that you try and**
 25 **facilitate the conclusion of a claim; and it may seem to**

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1 MR. CANNON: Objection; asked and answered.
 2 THE WITNESS: A lot of things in the claim, just a
 3 lot of problems with the claim.
 4 BY MR. BALMER:
 5 Q Were you looking to find out whether or not the
 6 insurance company had to honor its commitments to its
 7 preferred vendor and pay for things that it had expressly
 8 authorized?
 9 **A It was a lot of different aspects of the claim.**
 10 Q Including that?
 11 **A A lot of different things. It's private between**
 12 **the --**
 13 Q Well, I'm entitled to know what you think is a
 14 problem with the claim. I'm not asking you what the -- I
 15 know what the lawyers told you. They told you to
 16 litigate it and file a lawsuit against the insureds.
 17 What I want to know from you is what problems you saw
 18 with the claim.
 19 **A The mold limit and what was mold and what was**
 20 **water damage.**
 21 Q But you didn't hire an expert to tell you either
 22 one of those things --
 23 **A That's correct.**
 24 Q -- did you?
 25 **A That's correct.**

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1 Q Which was one of your problems, wasn't it?

2 A No.

3 Q So up to the point where it turns out that all
4 of the mold-remediation work being done in the home by
5 Universal's preferred vendor, Paul Davis Restoration, and
6 it turns out that they caused a significant mold
7 contamination problem in the Cathcart home, that's when
8 you go and you seek counsel to protect Universal. Isn't
9 that true?

10 MR. CANNON: Asked and answered.

11 THE WITNESS: I was looking to counsel for guidance
12 on this claim.

13 BY MR. BALMER:

14 Q What about the -- what about the claim were you
15 looking for guidance on?

16 A To review the claim to see its merits and make
17 the best decision that we could.

18 Q How much have you paid in attorneys' fees so far
19 in suing your insureds on this case?

20 A I don't know.

21 Q Do you have any idea whether that amount of
22 money may have come close to satisfying what would be
23 necessary to fix the house?

24 A I don't know.

25 Q How do we find that out?

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1 wanted some advice from counsel on how to proceed with
2 this claim.

3 BY MR. BALMER:

4 Q But along the way you had the opportunity, did
5 you not, to hire an expert on mold to come in and tell
6 you what's related and what's not? Isn't that right?

7 A But that was -- there were experts hired.

8 Q Which ones?

9 A That Gershwin and the other fellows we talked
10 about earlier.

11 Q What? Okay. Earlier you didn't know who the
12 heck they were. Now you're telling me in April -- by
13 April of 2013 you had spoken with Eric Gershwin? Do you
14 know who he is?

15 A I didn't speak with him.

16 Q I see. Well, you didn't have counsel at that
17 time yet either, did you? Because you're having your
18 first discussion about hiring counsel on April 23, 2013.

19 So my question to you is, prior to April of
20 2013, you talked to Eric Gershwin?

21 A No, I did not talk to Eric Gershwin.

22 Q Well, it wouldn't have been your counsel because
23 you didn't have counsel at that time; correct?

24 A I was talking to counsel probably at that time.

25 Q Well, that's not what your claim note says. It

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1 A You have to see what -- call up Universal and
2 find out what they paid. I have no idea since I left.

3 Q So despite all those things that we've been
4 talking about, you decided to talk with Rich and Otto
5 about obtaining counsel and spending money to protect
6 Universal instead of spending that same money to help the
7 insureds fix a problem caused by your preferred vendors.
8 Isn't that right?

9 MR. CANNON: I'm going to object to that. He's
10 already answered the question three times.

11 Go ahead.

12 THE WITNESS: I've already answered that question.

13 BY MR. BALMER:

14 Q Answer it for me. I haven't heard an answer to
15 that question yet. I hear everything but an answer.

16 MR. CANNON: You've heard an answer. You just don't
17 like the answer.

18 MR. BALMER: No. I think the answers that he's given
19 are not responsive to the question.

20 MR. CANNON: Can you amplify your answer at all?

21 THE WITNESS: There were a lot of inconsistencies
22 with this file as we all know. There were -- the file
23 kept changing as it went along. It started out as a
24 simple water loss and grew into more and more issues that
25 may or may not have been related to the claim, and I

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1 says -- on 4-23-2013 it says, "Will discuss obtaining
2 counsel on our behalf with Rich/Otto."

3 A Uh-huh.

4 Q It says that, doesn't it?

5 A Yes.

6 Q It doesn't say, "I've retained counsel" or "I've
7 been talking to counsel." It says, "I'm going to talk
8 with Rich and Otto about maybe doing that." That's kind
9 of what it says, isn't it?

10 A Yes.

11 Q Okay. So is there somebody else at Universal
12 that was conversing with Eric Gershwin before April 23,
13 2013?

14 A Not that I'm aware of.

15 Q Okay. And I think you were about ready to say
16 these other guys like Perry and Exponent; right?

17 A Yes.

18 Q But those guys -- you didn't talk to Perry
19 Contracting, did you?

20 A No.

21 Q And you didn't talk to Exponent or Jeff Hicks,
22 did you?

23 A No.

24 Q And so as of April 23, 2013, they're not on your
25 radar; isn't that true?

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1 **A I'm not sure.**
 2 Q Well, there's nothing in the claim notes that
 3 say that anybody from Universal, including you or anybody
 4 else -- Otto, Rich, Jenkins, the rest of any of the other
 5 people that touched this claim notes -- talked to Perry;
 6 right?
 7 **A Correct.**
 8 Q Or talked to Exponent; correct?
 9 **A Correct.**
 10 Q Which would include Jeff Hicks, who owns
 11 Exponent; right?
 12 **A Yes.**
 13 Q Okay. So when we're talking about the leading
 14 up to 4-23-2013 and you're talking about these
 15 inconsistencies, my question to you was directed to a
 16 time before you decided to hire counsel, and the question
 17 is this: Universal had the opportunity to hire whatever
 18 experts in the field it wanted to hire to help it figure
 19 out what mold is there, what water damage is there, what
 20 category of water damage, what's related to this or that
 21 or anything else. You had the opportunity to do that,
 22 didn't you?
 23 **A Yes.**
 24 Q And you didn't; correct?
 25 **A Correct.**

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1 Q All right. So now on April 23, 2013 you're
 2 starting to see that your -- that Universal may be in
 3 trouble and that's why you started discussing obtaining
 4 counsel?
 5 MR. CANNON: I'm going to object; it mischaracterizes
 6 what he said.
 7 BY MR. BALMER:
 8 Q I'm asking you. Isn't that true?
 9 **A I wanted counsel to review the file for**
 10 **guidance.**
 11 Q And ultimately the direction taken by Universal
 12 was to sue its insured; right?
 13 **A Correct.**
 14 Q But not until after pretending to want to
 15 resolve the claim by getting an inspection of the
 16 Cathcart home; true? In fact let me ask it this way:
 17 Isn't it true that Universal put on the appearance of
 18 maybe considering resolving the claim when it asks for
 19 access to the Cathcart home, but in reality the decision
 20 had already been made to file a dec-relief action in
 21 federal court against the insured? Isn't that true?
 22 MR. CANNON: I'm going to object to that question.
 23 It's argumentative, it's compound.
 24 Go ahead.
 25 THE WITNESS: Yeah, I don't remember the timing on

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1 it.
 2 BY MR. BALMER:
 3 Q Okay. So I'm going to call your attention to
 4 page 376. Down at the bottom on 5-9-2013, do you see
 5 that?
 6 **A Yes.**
 7 Q It says, "Mold expert E-mail. Mold throughout."
 8 You wrote that, didn't you?
 9 **A Yes.**
 10 Q Okay. So now you know, from the only mold
 11 expert that has done any significant testing in the home,
 12 that there is mold throughout the house. So you know
 13 this as of May 9, 2013; true?
 14 **A True.**
 15 Q Then it looks like you got a telephone call from
 16 Attorney Bailey. Who is that?
 17 **A Sunny Bailey.**
 18 Q Is she with Walt's office?
 19 **A Yes.**
 20 Q And it says -- down here on 5-10-2013 it says,
 21 "We agreed to use construction expert John Perry." Do
 22 you see that?
 23 **A Yes.**
 24 Q So this was -- you started looking into fixing
 25 your problem by hiring experts after you retained

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1 counsel; is that right?
 2 **A Yes.**
 3 Q Hadn't done it before, did you?
 4 **A No.**
 5 Q But there never was ever a report or opinions
 6 that were ever produced by John Perry; isn't that right?
 7 **A Best of my knowledge, no.**
 8 Q There was all kinds of screw-ups concerning the
 9 calculation of the additional living expenses; isn't that
 10 right?
 11 **A There were a few.**
 12 Q You couldn't get straight what the
 13 additional-living-expense tally was, could you?
 14 MR. CANNON: Objection; argumentative.
 15 THE WITNESS: No. I figured it out.
 16 MR. BALMER: Oh.
 17 Q Ultimately isn't it true that when you cut off
 18 additional living expenses for the Cathcarts, that there
 19 still remained a couple of thousand dollars on that
 20 \$46,000 limit? Isn't that true?
 21 **A About \$1500.**
 22 Q Do you know that you filed a lawsuit in federal
 23 court against the insureds to say that you, Universal,
 24 exhausted those policy limits?
 25 **A Well, technically, yes.**

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1 Q What do you mean "technically, yes"?

2 **A Because there's a \$2700 -- in the calculations**

3 **there's a \$2700 refundable deposit.**

4 Q Did you get that back?

5 **A No, not that I'm aware of.**

6 Q Why would you not get that back? There's no

7 evidence that the Cathcarts damaged in any way the home,

8 is there?

9 **A I don't know if the deposit was ever refunded.**

10 Q Why wouldn't you -- did you ever call and ask

11 about the deposit?

12 **A It's something that wasn't taken care of.**

13 MR. CANNON: What's the deposit for?

14 BY MR. BALMER:

15 Q What was the deposit for?

16 **A Damage deposit.**

17 Q So a \$2700 deposit and you're telling me that

18 you just never followed up on it. Meanwhile the

19 Cathcarts are moving back into their house; is that true?

20 **A That's true.**

21 Q And it's also true, then, that when the lawsuit

22 says that Universal exhausted the \$46,000

23 additional-living-expense limit, that's not true, is it?

24 MR. CANNON: Objection; argumentative.

25 THE WITNESS: No, that's true.

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1 BY MR. BALMER:

2 Q So you decided that you would gift the \$2700

3 refundable deposit to CRS at the expense of the insured?

4 MR. CANNON: I'm going to object to formation of the

5 question.

6 BY MR. BALMER:

7 Q Go ahead.

8 MR. CANNON: Go ahead.

9 THE WITNESS: I don't know if there's any damage that

10 was taken out or that we didn't get the whole deposit

11 back or we wouldn't have gotten it back. I don't know.

12 BY MR. BALMER:

13 Q You just didn't look into it, did you?

14 **A I was out of the claim -- no, I didn't.**

15 Q And so had that money been refunded as

16 expected -- like you expect a refundable security deposit

17 to be refunded; true?

18 **A No. We oftentimes don't get it back.**

19 Q Is it because you just failed to follow up on

20 it?

21 **A No, because they've come up with some cleaning**

22 **fee or some damage fee or something like that.**

23 Q All right. Is there anything in the file, the

24 claims file, at all to demonstrate that CRS was entitled

25 to retain, or the homeowner was entitled to retain, any

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1 part of that \$2700 refundable deposit?

2 **A No.**

3 Q To the extent that that \$2700 deposit was in

4 fact refundable but not pursued or received, that is a

5 full \$2700 in the \$46,000 additional-living-expense limit

6 that the Cathcarts no longer have access to; is that

7 right?

8 **A Well, not quite.**

9 Q Well, tell me how much of it would still be

10 left.

11 **A About roughly \$750.**

12 Q So if \$750 were left, then that would mean that

13 the allegation in the federal Complaint that was filed by

14 Universal against the insureds, the Cathcarts, that says

15 that \$46,000 was exhausted, that's not true, is it?

16 **A Hang on. Well, we actually overpaid the 46,000,**

17 **but that included the \$2700 deposit; and we had to pay**

18 **that or they wouldn't have gotten the place. So at the**

19 **time it was exhausted.**

20 Q Okay. And I think what you're referring to is

21 on page 378 in a claims note made by you on August 2nd,

22 2013?

23 **A Yes.**

24 Q You say, "We still owe CRS \$1800.58 and this

25 will bring the total payment on ALE, with what we paid

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1 the Cathcarts, directly to 46,690.33. However, part of

2 the charges is a \$2700 deposit, so they still have a

3 little left on their limit, taking into consideration the

4 deposit."

5 You wrote that, didn't you?

6 **A Yes.**

7 Q So the allegation in the Complaint that said

8 that the \$46,000 was unequivocally exhausted is not true,

9 is it?

10 MR. CANNON: Hundred percent misrepresents what the

11 Complaint says. I'll object to the question.

12 BY MR. BALMER:

13 Q Well, listen, I would imagine that if you're

14 making a federal case out of the insurance-coverage

15 issues and you represent to the Federal Court that the

16 \$46,000 in additional living expenses is exhausted and

17 therefore judgment should be entered in the favor of the

18 insurance company, that you would be unequivocally sure

19 and certain that that \$46,000 was completely exhausted.

20 Your claims note of --

21 MR. CANNON: 8-2.

22 BY MR. BALMER:

23 Q -- August 2nd, 2013 is directly contrary to that

24 filing, isn't it?

25 MR. CANNON: I'm going to object to the form of the

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1 question. It's argumentative, lacks foundation.

2 Go ahead.

3 THE WITNESS: No. We actually overpaid the policy
4 limits on ALE. We could not have rented out or got the
5 Cathcarts in temporary housing without that deposit. We
6 had to pay it.

7 BY MR. BALMER:

8 Q Did you bill the deposit against the limit?

9 A Yes, yes.

10 Q How does it protect the insureds'

11 additional-living-expense limit when Universal has the
12 right and ability to request a refund of the refundable
13 deposit and you just fail to do it?

14 A Well, sometimes it takes a long time to get that
15 deposit back and sometimes we don't get it all back and
16 it could exceed the \$4600.

17 Q Tell me where in the file it demonstrates any
18 effort on behalf of Universal to receive back any part of
19 the \$2700 refundable deposit.

20 A I'm not sure it's in there.

21 Q And if it's not in there, you can't testify that
22 any effort was made in that regard; is that right?

23 A That's true.

24 Q And that's to the sole and complete detriment of
25 the insureds, isn't?

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1 certainly the Cathcarts would still have some money
2 available in the \$46,000 policy limit. Is that true,
3 according to your own notes?

4 A Yes.

5 Q And if Universal, as it appears, failed to seek
6 reimbursement of that refundable security deposit, that
7 that failure would directly impact the Cathcarts' right
8 to the money under the additional-living-expense portion
9 of their policy, wouldn't it?

10 A Yes.

11 Q So without even so much as asking for the money
12 back, did Universal just decide that that would make its
13 declaratory-relief action against the insured a little
14 bit harder, a little bit more inconvenient, so you just
15 decided to leave the money with CRS or the rental
16 homeowner?

17 MR. CANNON: I'm going to object to that. It's
18 argumentative, misstates his testimony.

19 Go ahead.

20 THE WITNESS: No. It was -- we overpaid policy
21 limits to make sure the Cathcarts could rent something
22 out.

23 BY MR. BALMER:

24 Q But you didn't really overpay because there's a
25 refundable deposit.

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1 MR. CANNON: I'm going to object to the formation of
2 the question.

3 THE WITNESS: No.

4 MR. CANNON: Go ahead.

5 THE WITNESS: I believe that we had to pay over the
6 policy limits to get them in a place.

7 BY MR. BALMER:

8 Q You're not answering the question.

9 You say -- on 8-2-2013 you admit that the
10 Cathcarts still have a little left on their limit, taking
11 into consideration the deposit. You affirmatively make
12 that representation, don't you?

13 A Yes.

14 Q Nobody forced you to say that in the claims
15 notes, did they?

16 A No.

17 Q And it feels like to me -- and you can correct
18 me if I'm wrong -- that you're trying to wiggle out of
19 it. Is that right?

20 A No.

21 Q But you can't show to me any information or
22 documents or proof in the claims file that any effort was
23 made to get any of that deposit back, can you?

24 A No.

25 Q And if that was a refundable deposit, then

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1 A No. We overpaid.

2 Q It's hard to reconcile the overpayment testimony
3 right now that you're giving with the statement made,
4 unsolicitedly, by you on August 2nd, 2013 in the claims
5 notes that says, "So they still have a little left on
6 their limit, taking into consideration deposit." Either
7 you overpaid, you paid right on the money, or you
8 underpaid. What did you do?

9 A Overpaid for right know that I know of.

10 Q For right now. What can you do to determine
11 whether or not you underpaid?

12 A I can't do anything right now.

13 Q Why not?

14 A I'm not employed by Universal.

15 Q What could a Universal employee do?

16 A They could probably check on it.

17 Q How would they do it?

18 A Call up CRS.

19 Q And say, "Where's the deposit"?

20 A Yes.

21 Q Two and a half years later? Yeah?

22 A Yes.

23 MR. CANNON: We've been here seven and a half hours
24 right now.

25 MR. BALMER: I know. I just got a couple more

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1 questions, if you'll oblige.
 2 MR. CANNON: All right.
 3 BY MR. BALMER:
 4 Q On 377 there is -- on June 11, 2013 it talks
 5 about "feature No. 1 expense." What is that?
 6 A **Where are you, what page?**
 7 Q I'm on 377, sir.
 8 A **What's the date of the entry?**
 9 Q The date of the entry is June 11, 2013.
 10 My question is, what is a feature No. 1 expense?
 11 A **A feature No. 1 would be under building A,**
 12 **expense payment.**
 13 Q What's the difference between an expense and an
 14 indemnity payment?
 15 A **An expense would be not an indemnity payment.**
 16 **That's the only way I can explain it. It's an expense**
 17 **that we incur.**
 18 Q Like an investigation expense?
 19 A **Or legal fees.**
 20 Q So why wouldn't the money paid to Earth Resource
 21 Group not be an expense as opposed to an indemnity
 22 payment?
 23 A **Because that's what it says in the policy.**
 24 Q But you relied on the Earth Resource Group
 25 report as part of your investigation, did you not?

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1 A **Yes.**
 2 Q So do you agree that it would be unfair for the
 3 insurance company to save on the expense side of things
 4 and bill the insured under the indemnity portion for an
 5 expense that benefits the insurance carrier's
 6 investigation?
 7 MR. CANNON: Object to the form of the question.
 8 It's argumentative, it's compound.
 9 Go ahead.
 10 THE WITNESS: It's a moot point because it states in
 11 the policy on the mold limit that any testing would be
 12 part of the mold limit.
 13 BY MR. BALMER:
 14 Q Not if the insurance company was doing it;
 15 right?
 16 A **The insurance company didn't test anything.**
 17 Q So you're back to talking about that mold limit
 18 that kind of surfaced toward the end of the claim?
 19 A **Uh-huh.**
 20 Q Is that a "yes"?
 21 A **Yes.**
 22 Q Okay. Down on 6-24-2013 on page 377 it looks
 23 like you wrote an E-mail that says something about, at
 24 the very end of it, "All the experts presented are
 25 approved." Do you see that?

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1 A **Yes.**
 2 Q But there haven't been any reports or any
 3 opinions from any experts produced?
 4 A **Correct.**
 5 Q You paid for experts that didn't produce any
 6 opinions?
 7 A **Apparently.**
 8 Q On page 378 on a July 24, 2013 entry it says,
 9 "Discussion with our attorney Bailey. She went over her
 10 findings with her inspection with our experts. Bottom
 11 line is it looks like the mold issues are unrelated to
 12 the original water claim. They also do not see where
 13 there is a mold problem. The experts think UBNA is being
 14 taken for a ride. The NI have used UNA to completely
 15 remodel their home."
 16 Did you write that?
 17 A **Yes.**
 18 Q Is Attorney Bailey some sort of an expert in
 19 water damage or mold?
 20 A **Not aware one way or the other.**
 21 Q Well, she didn't do a report, did she? There's
 22 no report from her in the file that says those are her
 23 credentialing?
 24 A **No.**
 25 Q And you're making some pretty broad allegations

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1 here about what your experts are saying, aren't you?
 2 A **Yes.**
 3 Q And of course there isn't a single one of those
 4 experts available for me to cross-examine on any one of
 5 those opinions, is there?
 6 A **I'm not aware.**
 7 Q Well, is there?
 8 A **No.**
 9 Q I can tell you, as a representative of the
 10 Cathcart in this case, I find this language completely
 11 offensive. There's no question there. I'm telling you.
 12 I find that completely offensive that you would undertake
 13 such a belittling of your insured in your claims notes.
 14 You can move to strike if you want. I'm just telling
 15 you.
 16 MR. CANNON: You're making a statement. You're not
 17 asking a question. You're running out of time. Go
 18 ahead.
 19 MR. BALMER: There's no question there.
 20 Q 8-2-2013 on 378 it says, "We discussed the
 21 option of filing a dec action on coverage, as we have
 22 paid our limits on mold and ALE, in Federal Court." Do
 23 you see that?
 24 A **Yes.**
 25 Q We've talked about where the ALE sits, haven't

Page 289

1 we?

2 A Yes.

3 Q And we've talked about the problems,

4 inconsistencies, with the mold-limit claim, haven't we?

5 A Yes.

6 Q You say, "After our conversation I discussed

7 claim with Dave in legal. He needs to review the claim

8 and coverage opinion and he was in agreement with the fed

9 dec action." See that? Who is Dave?

10 A Dave Quera.

11 Q Who is Dave Quera?

12 A He's the head of legal.

13 Q So the idea here was hatched to sue the insureds

14 in federal court; right?

15 MR. CANNON: Objection to "hatched" phraseology.

16 Go ahead.

17 THE WITNESS: It was discussed with legal counsel and

18 the head of legal and they decided that they would

19 proceed with a dec action.

20 BY MR. BALMER:

21 Q Okay. Down to the last E-mail or the last -- I

22 guess it is an E-mail -- on 8-2 of 2013 on 378. This is

23 after you discussed the Cathcarts having a little left on

24 their limit, taking into consideration deposit. Can you

25 read into the record, please, the last two sentences

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1 there that you wrote.

2 A "While typing"?

3 Q Yes, sir.

4 A "While typing this E-mail, CRS called and are

5 arranging to pick up the rented furniture. This should

6 be interesting. I explained to CRS rep that if Cathcarts

7 refuse to give up the furniture, that they should be

8 informed they will be responsible for rental of the

9 furniture starting August 1st."

10 Q I'm offended by the language -- I'm just going

11 to tell you that -- but I got a question for you.

12 Do you write these kinds of things about your

13 insureds in the claims notes often, "This should be

14 interesting"?

15 A It was probably a mistake on my part.

16 Q What do you mean "mistake"?

17 A I shouldn't have put anything in there like

18 that.

19 Q I mean you can --

20 MR. CANNON: Like "should be interesting"?

21 THE WITNESS: "Should be interesting." I shouldn't

22 have said that.

23 BY MR. BALMER:

24 Q You can imagine how a jury might look at that.

25 A Yeah.

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1 Q Right?

2 A Yes.

3 Q Do you believe that that is condescending to an

4 insured --

5 A No.

6 Q -- to have something like that in the notes?

7 A No.

8 Q Disrespectful?

9 A No.

10 Q On the next page, 379, we've got feature No. 1

11 expense, "feature No. 1 expense to feature No. 1

12 indemnity," and then there's a "feature No. 1 expense to

13 feature No. 3 indemnity." These are on August 8, 2013.

14 Do you see that?

15 A Yes.

16 Q Okay. What I find interesting is that we've had

17 a discussion about expense versus indemnity on the Earth

18 Resource Group payment, haven't we?

19 A Yes.

20 Q And it appears, does it not, that initially the

21 Earth Resource Group payment was listed as a feature

22 No. 1 expense. Isn't that true?

23 A Yes.

24 Q Claim expense --

25 A Yes.

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1 Q -- as opposed to billing it against the

2 indemnity; isn't that right?

3 A Yes.

4 Q And so this was way back from June 4, 2013.

5 Then on August 8, 2013, over two months later, you're

6 raking back through the file and re-allocating expense to

7 indemnity?

8 A Yes.

9 Q Was that to assist in the Federal Court action?

10 A No. That was -- those entries are made --

11 payments for those to -- payments were made by clerical

12 people and they made a mistake, and I just found it and

13 corrected it.

14 Q So perhaps a clerical person had the same vision

15 that I had communicated to you about that being an

16 expense payment as opposed to an indemnity payment?

17 MR. CANNON: I'm going to object to that. How would

18 he know what an expense person was thinking? Total

19 speculation on his part.

20 THE WITNESS: I have no idea why they did it.

21 BY MR. BALMER:

22 Q Down at the bottom of 379 it says -- on

23 August 12, 2013 it says, "Reserve: I raised the expense

24 reserve by 20,000 as we are now filing a declaratory

25 judgment action." Do you see that?

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1 A Yes.

2 Q Now, expense reserve, is that \$20,000 then was
3 allotted off to attorneys' fees?

4 A **Raised, it said raised 20,000.**

5 Q Oh. So the attorneys' fees were more than the
6 20,000? You were raising it by 20-?

7 A Yes.

8 Q Okay. The next line there on August 19, 2013
9 says, "Void and re-enter. Out of the total paid to CRS,
10 \$3,071.29 were fees, so have been recoded to expense."
11 What does that mean?

12 A **Correct. It was the same thing that happened in**
13 **reverse to the entry above. They were paid out of**
14 **indemnity and they should have been expense. That was a**
15 **fee charged by the CRS for housing.**

16 Q Okay. On page 380, 9-24-2013 it says, "Invoice
17 from expert Exponent. Received expert invoice from
18 Exponent, \$2,240 invoice. Will send E-mail to vendor for
19 their W-9." Do you see that?

20 A **What date?**

21 Q 9-24.

22 And then the very next 9-24 entry you're making
23 payment in the amount of \$2,240 to Exponent?

24 A Yes.

25 Q Who didn't even provide a report?

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1 A **Well, there's expense side of the claims and**
2 **there's indemnity.**

3 Q Ultimately both on the expense side and the
4 indemnity side both play into the profitability of the
5 company; is that right?

6 MR. CANNON: Objection; asked and answered. We
7 answered that about 45 minutes earlier today.

8 THE WITNESS: Yeah, there's a lot of factors.

9 BY MR. BALMER:

10 Q All right. Next page -- we're almost done --
11 380 -- I'm sorry, we did this one.

12 381, please. On October 18, 2013 looks like you
13 paid Perry Consultant \$1,980.

14 A **Correct.**

15 Q For no report?

16 A **Correct.**

17 Q On 11-4-2013 there is a notation to you that you
18 were given a litigation update and the Cathcarts were
19 served with Summons and Complaint on November 2, 2013;
20 correct?

21 A **Correct.**

22 Q On the next page, 382, on November 8, 2013 there
23 is an expert invoice from Exponent for \$355.41. I
24 suppose that's in addition to the other \$2,000 that you
25 had previously paid?

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1 A **Correct.**

2 Q But meanwhile the insureds had to move back into
3 their home because the ALE was allegedly exhausted when
4 it wasn't. Is that fair?

5 MR. CANNON: I'm going to object to the form of the
6 question. It's argumentative. It's five questions and
7 two statements.

8 Go ahead.

9 THE WITNESS: Yeah, this expense payment has nothing
10 to do with ALE.

11 BY MR. BALMER:

12 Q The point is that Universal was spending money
13 that otherwise could conceivably have been spent on the
14 insureds. Isn't that true?

15 MR. CANNON: I'm going to object to the form of the
16 question.

17 THE WITNESS: No, that's not true.

18 BY MR. BALMER:

19 Q It's all coming out of the same wallet, isn't
20 it?

21 A **No.**

22 Q It's not?

23 A **Huh-uh.**

24 Q It's not coming out of Mr. and Mrs. Puerto Rico
25 family's ultimate wallet?

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1 MR. CANNON: Wait a moment. Exponent, it doesn't say
2 anything about expert. It says Exponent.

3 MR. BALMER: It says, "Expert invoice from Exponent
4 for \$355.41."

5 MR. CANNON: Go ahead.

6 BY MR. BALMER:

7 Q Is that in addition to the other money that you
8 had already paid for no report from Exponent?

9 A **Well, if it's there like that, yes, it is.**

10 Q Call your attention to 384 and the entry of
11 July 1st, 2014 which follows --

12 MR. CANNON: Okay, I see it.

13 BY MR. BALMER:

14 Q -- one, two, three, four, five -- five other
15 "defense invoice paid legal." Do you see all that? Are
16 those all legal bills that have been incurred by
17 Universal on --

18 A **From when?**

19 Q -- prosecuting their insureds?

20 A **From 1-13?**

21 MR. CANNON: Object to the form of that.

22 BY MR. BALMER:

23 Q Go ahead.

24 A **They were expense -- legal expense.**

25 Q What does that typically mean, attorneys' fees?

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- 1 A Yeah, yes.
- 2 Q Down at the 7-1-2014 it says, "Increased expense
3 reserves. Increased expense reserves by 25,000." Do you
4 see that?
- 5 A Yes.
- 6 Q And this is in addition to the increase of
7 \$20,000 we talked about before?
- 8 A Yes.
- 9 Q On top of some unknown amount; right?
- 10 A Yes.
- 11 Q Can you read into the record the third sentence,
12 please, that starts "In an effort."
- 13 A **"In an effort to defuse the claim, we have filed
14 a dec action. The insured is filing many pleadings and
15 running up the litigation costs. There is no way to
16 resolve the action without paying monies that we don't
17 believe are justified."**
- 18 Q And that opinion comes from which expert that
19 has produced any kind of opinion or report?
- 20 A **That's Attorney Valerie Leatherwood.**
- 21 Q Who is Valerie Leatherwood?
- 22 A **She was in our legal department.**
- 23 Q Is she not there anymore?
- 24 A No.
- 25 Q She just kind of ducks in and makes this kind of

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- 1 statement and then she's gone?
- 2 MR. CANNON: I'm going to object to that. It's a
3 statement.
- 4 BY MR. BALMER:
- 5 Q So the question I had earlier today was whether
6 or not you tried to get a jump on an action against your
7 insureds, and apparently there's an admission here: "In
8 an effort to defuse the claim, we filed a dec action."
9 Does that refresh your memory about why you decided to do
10 it?
- 11 A **I just took it under advice from legal and they
12 took it over -- they took the claim over from there and
13 proceeded with the claim.**
- 14 Q One more question: Next page, 385, the last
15 page of the claims notes, call your attention to
16 March 30, 2015. The reserves were increased again by
17 20,000?
- 18 A Yes.
- 19 Q In addition to the 25,000 before that and the
20 20,000 before that on top of an unspecified sum?
- 21 A Yes.
- 22 Q That's a lot of money.
- 23 A **Yes, it is.**
- 24 Q That's a lot of money.
- 25 Okay. I think we got this one marked, did we

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- 1 not?
- 2 A **We do. It's marked.**
- 3 Q I think Walt is running me out of time here and
4 I'm going to -- we can stop for today. Listen, I'm going
5 to reserve my right to bring you back and talk to you
6 about all the big stacks of stuff that were brought for
7 the first time today. I don't know if that's going to
8 happen or not. I just feel like I need to do that on the
9 record and also to object to the documents being produced
10 today as things that should have been produced years ago.
11 Walt and I can fight about all that stuff later.
- 12 THE REPORTER: Mr. Cannon, do you want a copy?
- 13 MR. CANNON: Please.
- 14 (Discussion held off the record.)
- 15 BY MR. BALMER:
- 16 Q So in looking through the stack of materials as
17 we ran out of time, I noticed in there that there was an
18 invoice from James Ketcham to Olson Cannon Gormley Angulo
19 Stoberski in the amount of \$1400. When you testified
20 earlier that you didn't have a copy of the invoice with
21 you, you mistestified?
- 22 A Yes.
- 23 Q So I'm going to go ahead and keep this and
24 attach it to the record as the next exhibit in line.
- 25 MR. CANNON: I believe I have a copy.

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- 1 MR. BALMER: Okay. We'll attach this as
2 Exhibit No. 12.
3 (Defendants' Exhibit 12 was marked for
4 identification by the Certified Court Reporter.)
5 (Deposition concluded at 5:35 p.m.)
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1 CERTIFICATE OF DEPONENT

2

3 PAGE LINE CHANGE REASON

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15

16 I, JAMES R. KETCHAM, deponent herein, do hereby
 17 certify and declare under penalty of perjury the within
 18 and foregoing transcription to be my deposition in said
 19 action; that I have read, corrected and do hereby affix
 20 my signature to said deposition.

21

 JAMES R. KETCHAM, Deponent

22

23

24

25

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1 REPORTER'S CERTIFICATE

2

3 I, Ellen A. Goldstein, a duly certified court
 4 reporter in and for the County of Clark, State of Nevada,
 5 do hereby certify:

6

7 That I reported the taking of the deposition of
 8 JAMES R. KETCHAM at the time and place aforesaid;

9

10 That prior to being examined, the witness was by
 11 me duly sworn to testify to the truth, the whole truth
 12 and nothing but the truth;

13

14 That the witness requested, or it was requested
 15 on his behalf, to read and sign the transcript herewith;

16

17 That I thereafter transcribed my shorthand notes
 18 into typewriting and that the typed transcript of said
 19 deposition is a complete, true and accurate transcription
 20 of my shorthand notes taken down at the proceedings.


21

22 I further certify that I am not a relative or
 23 employee of an attorney or counsel of any of the parties,
 24 nor a relative or employee of any attorney or counsel
 25 involved in said action, nor a person financially
 26 interested in the action.

27

28 IN WITNESS THEREOF, I have hereunto set my hand
 29 in the County of Clark, State of Nevada, this 6th day of
 30 March 2016.

31


 Ellen A. Goldstein, CCR No. 829

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